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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

JUN 2 2004

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

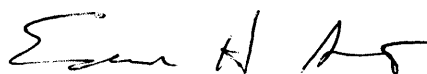
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a religious organization affiliated with the Presbyterian denomination. The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as an "Associate Pastor."

The director denied the petition, finding that the petitioner failed to establish that it is a qualifying religious organization, that the offered position qualifies as a religious occupation or vocation for the purpose of special immigrant classification, and that the beneficiary has had the requisite two years of continuous experience in a religious occupation. The director further determined that the petitioner failed to establish that it had the ability to pay the offered wage at the time of filing. Finally, the director determined that the petitioner failed to establish that the beneficiary was in a valid R-1 nonimmigrant status at the time of filing the instant petition.

On appeal, counsel for the petitioner submits a brief and additional evidence, some of which had been previously submitted.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code

of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a native and citizen of Korea. The beneficiary has entered the United States on at least two occasions as a nonimmigrant visitor for pleasure (B-2). He most recently entered the United States as a nonimmigrant visitor on July 6, 2000. The beneficiary subsequently changed his status on the basis of an approved religious worker petition filed by his former employer.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy several eligibility requirements.

The first issue to be addressed in this proceeding is whether the petitioner is a qualifying religious organization.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner provided the Bureau with a letter from the New Castle Presbytery indicating that the petitioner is a congregation within the New Castle Presbytery and as such it is affiliated with the Presbyterian Church that enjoys tax-exempt status. The petitioner provided the Bureau with a somewhat illegible letter addressed to the United Presbyterian Church in Philadelphia. Internal Revenue Service indicating that the United Presbyterian Church was granted a group ruling in 1964. In a response to a request for additional evidence, the petitioner's attorney wrote a letter to the Bureau stating that the petitioner is tax exempt under Section 501(c)(3), however it has not filed, nor is it required to file Form 1023, seeking recognition of tax exempt status. The petitioner's attorney provided the Bureau with a "substantially completed" Form 1023 (application for recognition of exemption under Section 501(c)(3) of the Internal Revenue Code). The director determined that the petitioner failed to establish

that the petitioner qualifies as a tax-exempt religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petition may submit such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under Section 501(c)(3) of the Internal Revenue Code as it relates to religious organizations. This documentation includes a completed Internal Revenue Service Form 1023, the Schedule A supplement, and a copy of the organizing instrument of the church that contains a proper dissolution clause and that specifies the purposes of the organization.

In review, the petitioner has failed to provide sufficient evidence that it qualifies as a tax-exempt religious organization. The petitioner failed to provide sufficient evidence that it would qualify under the group ruling issued to the United Presbyterian Church in Philadelphia. In the alternative, the petitioner asserts that it meets 8 C.F.R. § 204.5(m)(3)(i)(B) by providing the Bureau with a letter from the petitioner's attorney with a "substantially completed" Form 1023. However the petitioner failed to provide the Bureau with a copy of the organizing instrument of the church that contains a proper dissolution clause. The petitioner has failed to establish that it is a qualifying organization.

The second issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation or vocation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation or vocation as defined in the regulations.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

In this case, the petitioner states that the beneficiary "will provide worship services and Bible studies in Korean to our Korean-American members [and] his primary duties will include conducting worship service, prayer meetings, leading Bible Study and Sunday school, and visiting the sick in our Korean-American congregation."

The director determined that the record is insufficient to establish that the offered position qualifies as a religious occupation. The director further determined that the petitioner failed to establish that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. The director further determined that the record contains no evidence that the petitioner has ever relied on salaried employees rather than volunteers from among the members of its congregation to perform the work described.

After a review of the record, it is concluded that the petitioner has overcome the director's objection. The petitioner provided a copy of its constitution (Book of Order) that states that pastors and associate pastors are permanent offices of ministers.

The next issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on March 15, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least March 15, 1999.

The petitioner submitted a letter from its Senior Pastor, stating that the beneficiary worked for the Korean Presbyterian Church from

November 1, 2000 to March 13, 2001 and on March 14, 2001, he became a full-time "Missioner/Partner in Mission" for the petitioner. The petitioner's Senior Pastor also stated that the beneficiary was ordained a minister in 1986 by the "Presbyterian Church of Korea, a sister denomination . . . and has been serving as a Pastor abroad and here since his ordination." The petitioner also provided the Bureau with translated certified statements stating that the beneficiary has served as a full-time Associate Pastor at the Cho-Dae Presbyterian Church of Taegu, Korea from April 1, 1998 to April 1, 1999, and that he had been employed from April 2, 1999 to October 31, 2000 as Mission Pastor and Chaplain of Yeasung Commercial High School within the Taegu Nam Presbytery. The petitioner also submits a letter from the Rev. Dr. [REDACTED] dismissing the beneficiary from his Korea position and transferring him to the New Castle Presbytery in the United States.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years continuous experience as an Associate Minister.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding the filing of the petition. In the instant case, the petitioner asserts that the beneficiary worked for the Korean Presbyterian Church from November 1, 2000 until March 13, 2001. The petitioner provided the Bureau with copies of the beneficiary's tax returns for 2000 and 2001. The petitioner states that the beneficiary earned an annual salary of \$30,000 while employed at the Korean Presbyterian Church. The petitioner states that it pays the beneficiary \$33,000 a year. According to the beneficiary's income tax record, he earned only \$2,300 in the year 2000, less than one month's salary at the \$30,000 per year rate. This evidence is inconsistent with the petitioner's assertion that the beneficiary was employed full-time for the two-year period prior to the filing of the petition. In review, the petitioner has failed to establish that the beneficiary has the two-years required experience in the proffered position.

The next issue to be considered in this proceeding is whether the petitioner established that it has the ability to pay the proffered wage. In pertinent part, 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax

returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the proffered wage, \$33,000 per year at the time of the filing of the petition, March 15, 2001 and continuing until the beneficiary obtains lawful permanent residence. The petitioner submits copies of treasurer's reports and investment management summaries as evidence of its ability to pay the proffered wage. The petitioner failed to provide evidence in the form of audited financial statements or tax returns as required. The petitioner has failed to overcome this objection of the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.